

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**ROYAL BENSON, M.D. and BENSON
OB/GYN CENTER, P.A.,**

Plaintiffs,

v.

**ST. JOSEPH REGIONAL HEALTH
CENTER, et al.,**

Defendants.

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CIVIL ACTION NO. H-04-4323

MEMORANDUM AND ORDER

Pending before the Court is Defendant St. Joseph Regional Health Center's Motion for Sanctions (Doc. No. 354). During the discovery phase of this case, Plaintiffs sought the production of the underlying patient charts forming the basis of the peer review conducted on OB/GYNs with privileges at St. Joseph. They represented to the Court that they needed these charts in order for their expert to conduct a "meaningful review." Because of the large number of documents and expense involved, the Court ordered Defendant to assume the cost of producing the first 350 patient charts. Plaintiffs were then given the option of requesting additional charts, but ordered to pay one-half of the cost of retrieving and copying these charts. Plaintiffs subsequently requested all additional patient charts, totaling 1378, and paid for one-half of the cost of that production. Defendant now seeks sanctions after learning that, despite Plaintiffs' representations to the Court regarding their need for the charts, Plaintiffs asked their expert to review only 61 of the 1378 patient charts produced.

Plaintiffs explain that after receiving the 1378 patient charts, they conducted their own internal review of all of the charts and created summaries of their contents. Following this

internal review, Plaintiffs sent to their expert the whole patient chart on some cases and the summaries of all cases.

The Court is exceedingly cognizant of the discovery burden placed on Defendant in this case, but it is disinclined to award sanctions in this instance. The Court believes that Plaintiffs' representations to the Court regarding their intentions for the patient charts were made in good faith. Production of the charts was sought for expert review, even if the expert did not personally handle each and every patient chart but rather a summary of the chart compiled internally by Plaintiffs. Thus, Defendant's motion for sanctions is **DENIED**.

IT IS SO ORDERED.

SIGNED this 22nd day of August, 2007.

A handwritten signature in black ink, appearing to read "Keith P. Ellison", is written over a horizontal line.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

TO INSURE PROPER NOTICE, EACH PARTY WHO RECEIVES THIS ORDER SHALL
FORWARD A COPY OF IT TO EVERY OTHER PARTY AND AFFECTED NON-PARTY
EVEN THOUGH THEY MAY HAVE BEEN SENT ONE BY THE COURT